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IN THE BOARD OF REVENUE FOR RAJASTHAN

APPEAL/ DECREE/T.A./337/2002/JODHPUR

Smt. Suva Kanwar (deceased) through her legal representatives:-

- 1- Shri Rajendra Singh
- 2- Shri Surendra Singh
- 3- Shri Narpat Singh
- 4- Smt. Lad Kanwar w/o Shri Gajendra Singh
- 5- Shri Ganga Singh
- 6- Shri Dharendra Singh
- 7- Shri Jethu Singh
- 8- Shri Magan Singh

Sons of Shri Hameer singh

Sons of Shri Gajendra Singh

All by caste Rajput r/o Sarecha Tehsil Luni Distt. Jodhpur.

....Appellants

Versus

- W.R
d. 2
28.11
- 1- Shri Mohan Ram s/o Shri Kenaram
 - 2- Shri Balaram s/o Shri Kenaram
 - 3- Shri Manglaram (deceased)
 - 4- Shri Sagarmal s/o Shri Kenaram
 - 5- Shri Bhutra Ram s/o Shri Kenaram
 - 6- Mst. Raiki w/o Shri Kenram
 - 7- Shri Ganga Ram s/o Shri Bhana Ram
 - 8- Shri Harchand Ram s/o Shri Bhana Ram
 - 9- Shri Pekaram Ram s/o Shri Bhana Ram
 - All r/o Sarecha The Luni Distt Jodhpur
 - 10- Mst. Imli alias Jhamku d/o Shri Kenaram w/o Shri Mangilal
caste Meghwal r/o Mogda Tehsil Luni Distt Jodhpur.
 - 11- Mst. Chinki d/o Shri Kenaram w/o Shri Devaram Meghwal
r/o Sar Tehsil Luni Distt Jodhpur
 - 12- State of Rajasthan through Tehsildar Luni.

... Respondents.

D.B.

Shri Subodh Agarwal, Member
Shri Bajrang Lal Sharma, Member

Subodh
28/11/11

d. 2

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APPEAL/ DECREE/T.A. /337/2002/JODHPUR
LRs of Smt. Suva Kanwar & others Vs. Mohan Ram & others

Present:

Shri Bhawani Singh, Counsel for Appellant.

Shri Dunichand Dhidharia, Counsel for Respondents.

Shri R.K. Gupta, Govt. Advocate for the State.

Dated: 28.11.11

JUDGMENT

This appeal has been preferred by the appellants under section 224 of Raj. Tenancy Act, 1955 (In short 'the Act') being aggrieved by the judgment and decree passed by Revenue Appellate Authority, Jodhpur on 24-3-98 (In appeal No. 45/93).

2- The brief facts of the case are that Mrs. Suva Kanwar filed a regular suit under section 88 and 188 of the Act against the respondents/defendants in the court of Assistant Collector (HQ), Jodhpur. The Assistant Collector (HQ) decreed the suit and declared the plaintiff Smt. Suva Kanwar as khatedar of the disputed land. The respondents/defendants assailed the judgment & decree of the trial court by way of appeal in the court of Revenue Appeal Authority, Jodhpur who accepted the appeal on 24-03-98 and quashed the judgment & decree of the trial court. The Appellants have challenged the judgment & decree of the first appellate court by filing this second appeal in this court.

3- Heard the Learned Counsels of the rival parties.

4- The Learned Counsel of the Appellants contended that the impugned ex-parte judgment and decree is against the basic principles of jurisprudence and has been passed ignoring the evidence available on file. He further argued that before the trial court the defendants did file the written statements and the trial court framed 7 issues. He submitted that the land in question was Jagir Land and Khudkasht of the Jagirdar Shri Jethudan and after the death of Shri Jedhudan, Smt Suraj Kanwar w/o Jagirdar Jethudan became the khatedar. He submitted that Mrs. Suva Kunwar purchased the disputed land through a registered sale-deed dated 27.9.72. He also contended that the judgment of the Lower appellate court is perverse as the findings of the court are not based on any

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evidence. He argued that Shri Kanya was never recorded as a khatdar of the land in question. The learned advocate also submitted that since the judgment of the appellate court is ex-parte, therefore, the application under section 5 of the Limitation Act be accepted and the appeal be decided on merits. He finally, urged the court to accept this appeal and quash the impugned ex-parte judgment passed by the first appellate court.

5- The Learned Counsel for the respondents contended that the appeal is hopelessly time barred therefore it should be dismissed on the sole ground of limitation. He argued that the disputed land was not the personal property of the Jagirdar Shri Jethudan as it was not declared by the competent authority under section 23 of Rajasthan Land Reforms and Jagir Resumption Act. He further submitted that Mrs. Suraj Kanwar was not competent to sell the land in question as it was not recorded in her khatedari on the day of sale. He also argued that the Appellant/Plaintiff is only a purchaser and the sale is made by Mrs. Suraj Kanwar is ab-initio void as she did not own the land in question. He submitted that Shri Kanya became the khatedar on the day of resumption of Jargirs as and when The Rajasthan Land Reforms and Jagir Resumption Act came in to force in the state. The Learned advocate also urged that the land in question was recorded in the name of Shri Kanya who belongs to scheduled caste community and the appellants are from general caste, therefore, such a decree is violative of section 42 of the Act and the appeal has been abated as the respondents 3 is dead but his legal representatives have not been brought on record. He cited 1967 R.R.D. page 115 in support of his arguments. He finally urged the court to dismiss the appeal and uphold the impugned judgment and the decree of the Revenue Appellate Authority.

6- We gave serious consideration to the rival contentions advanced by the counsels of the parties. We also carefully studied the records available on file.

7- At the onset, we would like to examine the issue of limitation in this second appeal. This second appeal has been filed by the appellants on 23.1.2002 assailing the judgment and decree passed by the Revenue Appellate Authority Jodhpur

Signature

*Submitted
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dated 24.3.1998. The appellants have filed an application under section 5 of the Limitation Act supported by an affidavit. The record of the lower appellate court reveals that the appellants were not heard in the appellate court. The reply and the counter-affidavit filed by the respondents is not satisfactory to controvert the facts of the application and affidavit filed by the appellants. In the circumstances of this case, this court finds it justifiable to decide the appeal on merits, therefore, the application under section 5 of the Limitation Act filed by the appellants is hereby accepted.

8- This is an undisputed fact that when the land in question situated in village Sarecha was sold on 27.9.1972 by Mrs. Suraj Kanwar wife of Shri Jethudan to Mrs. Suva Kanwar wife of Shri Hamir Singh, it was not recorded in the khatedari of Mrs. Suraj Kanwar. On the contrary, the disputed land was recorded in khatedari of Shri Kanya son of Shri Babhuta Bhambi in Svt. 2015 and Svt. 2022 to 2025. Therefore, as per the revenue records Mrs. Suraj Kanwar was not competent to ~~sale~~ the land in question as it was not in her khatedari on the day of the sale. It is also very pertinent to mention here that the appellants/ plaintiff did not produce the copy of Jamabandi of relevant year which can prove that Mrs. Suraj Kanwar was khatedar tenant on the day of execution of the sale deed which could be the only basis of their suit.

9- The only argument advanced by the learned counsel of the appellants is this that the disputed land was in 'khudkasht' of the Jagirdar Shri Jethudan, therefore, after the death of Shri Jethudan and by operation of the provisions of Rajasthan Land Reforms & Jagir Resumption Act, 1952 Mrs. Suraj Kanwar became khatedar automatically. In this regard we considered the judgment of this court cited in RRD 1967 page 115 in which the D.B. of this court has observed that the Jagir Commissioner will declare the list of the properties of the concerned Jagirdar whose particular property will not vest in the State. In this case we are of the opinion that the land in question was not declared as a khudkasht land by the competent authority, therefore, Mrs. Suraj Kanwar wife of Shri Jethudan was not in any way competent to alienate this land to the appellants. In this case, we also hold that this appeal will not

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abate in case of death of Shri Mangla as the right to sue survives in the appeal.

10- We carefully went through the judgment & decree passed by the trial court. The trial court has also relied on the doctrine of adverse possession and observed that even on the basis of adverse possession, the plaintiffs have acquired khatedari rights on the disputed land. On this issue we concur with the opinion of the Revenue Appellate Authority that doctrine of adverse possession does not apply on the lands belonging to Scheduled castes and Scheduled Tribes and the plea of adverse possession was not proved by the plaintiffs in the trial court.

11- As discussed above, this court does not find any infirmity in the impugned decree and judgment passed by the first appellate court. Therefore, the appeal filed by the appellants fails and the impugned judgment and decree passed by the Revenue Appellate Authority, Jodhpur is upheld. No order as to costs.

Pronounced in the open court.

hse 28.11.2011
(Bajrang Lal Sharma)
Member


(Subodh Agarwal)
Member